
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File Number: EB-02-BS-114
FNX Broadcasting, LLC.)	
WPHX)	
Sanford, Maine)	
)	NAL/Acct. No. 200332260001
)	
)	FRN: 0004 0757 35

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: October 29, 2002

By the District Director, Boston Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that FNX Broadcasting, LLC. (“FNX”), licensee of radio station WPHX has apparently violated Sections 73.1125, and 73.3526(b) of the Commission's Rules and Regulations (“Rules”)¹, by failing to staff the main studio, and by failing to maintain the public inspection file at the main studio. We conclude that FNX is apparently liable for forfeiture in the amount of seventeen thousand dollars (\$17,000).

II. BACKGROUND

2. On May 14, 2002, District Director Vincent Kajunski from the Commission's Boston Office inspected Radio Station WPHX in Sanford, Maine. Unable to locate the station's main studio, Agent Kajunski called the station's local telephone number and spoke with Michael Waggoner, General Manager of the station. Mr. Waggoner stated that the main studio was unmanned and arrangements were made to meet at the main studio. While at the studio, Mr. Waggoner stated that the main studio had not been staffed since several months after FNX purchased the station in 1999.

3. While on the phone with Mr. Waggoner, he informed agent Kajunski that the station's public inspection file was located at the City of Sanford Public Library. The library had no knowledge of WPHX's public inspection file. When Mr. Waggoner arrived at the main studio, he had the public inspection file with him and admitted that they were maintaining the file at the station's Portland, Maine office. Inspection of the public file revealed that the most recent Issues-Programs File was dated September 2001.

¹ 47 C.F.R. §§ 73.1125, and 73.3526(b).

4. On August 2, 2002, agent Kajunski of the Boston Office issued an Official Notice of Violation (“NOV”) to FNX for violations found during the May 14, 2002, inspection. The NOV issued to FNX included the non-compliance with Sections 73.1125, 73.3526(b), and 73.3526(e)(12)² of the Rules.

5. On August 26, 2002, the Boston Office received a response from FNX. FNX acknowledged in its response that it had failed to comply with both the Commission’s main studio staffing and public inspection file requirements, and detailed corrective steps that it had taken to eliminate the violations.

III. DISCUSSION

6. Section 73.1125 of the Rules requires each broadcast station to maintain a main studio. In adopting the main studio rules, the Commission explicitly informed permittees and licensees that compliance with the main studio rules requires maintenance of a meaningful and management presence.

The Commission defined “meaningful presence” in a decision dated June 19, 1991, 6 *FCC Rcd* 3615 (1991). In paragraph 9 of the decision it states that “a main studio must, at a minimum, maintain full-time managerial and full-time personnel”. Note 2 of the decision continues to state that “this is not to say that the same staff person and manager must be assigned full-time to the studio. Rather, there must be management and staff presence on a full-time basis during normal business hours to be considered meaningful.”

At the time of inspection, there was no station staff present or assigned to the main studio.

7. Section 73.3526(b) of the Rules requires a station to maintain their public inspection file at the main studio. At the time of inspection, the public inspection file was being maintained at the station’s Portland, Maine office.

8. Based on the evidence before us, we find that FNX willfully³ and repeatedly⁴ violated Sections 73.1125, and 73.3526(b) of the rules by failing to staff the main studio, and failing to maintain the public inspection file at the main studio. *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) (“*Forfeiture Policy Statement*”)⁵, sets the base forfeiture amount at \$7,000 for failure to staff the main studio, and the base amount at \$10,000 for failure

² 47 C.F.R. § 73.3526(e)(12)

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provide that “the term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act...” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term “repeated”, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁵ 47 C.F.R. § 1.80(b)(4).

to maintain the public inspection file at the main studio. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934 (“Act”), as amended,⁶ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. The record reveals that FNX does have an overall history of compliance. However, the violations are egregious. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a seventeen thousand dollar (\$17,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁷, and Sections 0.111, 0.311 and 1.80 of the Rules⁸, FNX Broadcasting, LLC. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of seventeen thousand dollars (\$17,000) for willful and repeated violation of Sections 73.1125, and 73.3526(b) of the Rules.

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, FNX Broadcasting, LLC. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332260001 and FRN: 0004075735

12. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. 200332260001.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 U.S.C. § 503(b)

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁹ See 47 C.F.R. § 1.1914.

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15. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

16. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to FNX Broadcasting, LLC., c/o Rubin, Winston, Kiericks, ET AL, 1155 Connecticut Ave., Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Vincent F. Kajunski
District Director
Boston Office